## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

JUSTIN ODELL LANGFORD,

Plaintiff,

v.

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MONIQUE A. MCNEILL, ESQ.,

Defendant.

Case No.: 3:19-cv-00175-MMD-WGC

**Report & Recommendation of United States Magistrate Judge** 

Re: ECF Nos. 1, 1-1

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and pro se complaint (ECF No. 1-1). The court recommends that Plaintiff's IFP application be denied as 14 moot and that this action which improperly asserts a claim for ineffective assistance of counsel be 15 dismissed and the case administratively closed so that Plaintiff may properly bring his claim in a direct appeal, post-conviction, or habeas corpus proceeding, after exhausting applicable administrative remedies.

Plaintiff's complaint includes a claim that his court-appointed criminal defense counsel was ineffective in violation of the Sixth Amendment. Claims for ineffective assistance of counsel are not recognized under section 1983 because specific appellate and habeas statutes apply to such a claim instead. See Nelson v. Campbell, 541 U.S. 637, 643 (2004). Additionally, a public defender representing a client in the lawyer's traditional adversarial role is not a state actor for purposes of section 1983. See Miranda v. Clark County, 319 F.3d 465, 468 (9th Cir. 2003) (citation omitted).

## III. RECOMMENDATION

IT IS HEREBY RECOMMENDED that the District Judge enter an order DENYING Plaintiff's IFP application (ECF No. 1) as moot, and DISMISSING this action and administratively closing the case.

The Plaintiff should be aware of the following:

- 1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to this Report and Recommendation within fourteen days of being served with a copy of the Report and Recommendation. These objections should be titled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the district judge.
- 2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed until entry of judgment by the district court. 13

Dated: July 18, 2019.

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William G. Cobb

United States Magistrate Judge

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